FILED
FEB 19 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 73-1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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INDEX

	Page
CITATION TO OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATUTE INVOLVED	4
STATEMENT OF THE CASE	5
WHEN QUESTIONS RAISED	9
REASONS FOR GRANTING THE WRIT	9
This Case Raises Important Questions Concerning the Relationship Between the Constitutional Provision for Interstate Extradition and the Constitutional Rights of an Individual	9
CONCLUSION	16
Appendix A –	
Opinion of the Supreme Court of the State of Nevada	1a
Order to Stay Remittitur	4a
Appendix B–	
Affidavit of John D. Conley	5a
Bench Warrant	7a
Probation Report and Pronouncement of Judgment	8a

Page

Oral Opinion of the Superior Court of the State of California 9a

Order of the Eighth Judicial District Court of the State of Nevada 10a

Appendix C–
Petition for Writ of Habeas Corpus 12a

AUTHORITIES CITED

Cases:

Application of Middlebrooke,
88 F. Supp. 943 (1950),
reversed on other grounds, 199 F.2d 308 (1951),
cert. denied 342 U.S. 863 (1951) 12

Ex Parte Morgan,
78 F. Supp. 756 (1948),
affirmed 175 F.2d 404,
cert. denied, 338 U.S. 827 (1949) 11

Innes v. Tobin,
240 U.S. 127 (1916) 11

Kirdland v. Preston,
385 F.2d 670,
128 U.S. App. D.C. 148 (1967) 10

Constitution of the United States:

Article IV, Section 2, Clause 2 . . . . . 3, 9, 12

Amendment IV 4

Amendment XIV, Section 1 4

Page

Statutes:

18 U.S.C. 3182 . . . . . 5, 9, 10, 11

28 U.S.C. 1257(3) 2

IN THE

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No.

EUGENE CHARLES RANDONO,

Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

Petitioner, Eugene Charles Randono, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Nevada entered in the above-captioned case on November 20, 1973.

CITATION TO OPINION BELOW

The opinion of the Nevada Supreme Court is unreported and is printed in Appendix A *infra*, p. A. 1.

JURISDICTION

The judgment of the Nevada Supreme Court was entered on November 20, 1973. An application for stay pending the filing and disposition of a petition for certiorari to this Court was granted by the Nevada Supreme Court on November 26, 1973 (Appendix A, p. A. 4). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Where a person is free on bond and permitted to return to his home state pending sentencing upon a felony conviction, and he suffers a heart attack and is hospitalized in his home state, and thus is unable to appear for sentencing at the scheduled time, and, through counsel, he timely requests a continuance of the sentencing on the basis of a letter from the attending physician to the court stating his condition and his hospitalization, but a bench warrant is summarily issued for his arrest, and the foregoing circumstances appear on the face of the rendition documents, and are found by the court in the asylum state in a habeas corpus hearing on a demand for extradition, is there probable cause under the Fourth Amendment for the issuance of an arrest warrant in aid of extradition?

2. In the foregoing circumstances, is the person a "fugitive from justice" who has "fled" the demanding state and therefore subject to extradition?

3. In the foregoing circumstances, where it has also been found by the court in the asylum state, on the basis of the undisputed testimony of a recognized heart specialist, that the person's condition is such that if he is incarcerated the probability of death approaches almost a certainty, does it constitute deprivation of life without due process of law under the Fourteenth Amendment to extradite that person?

4. What are the minimum procedures required by due process of law to safeguard the life of an accused in a criminal proceeding when it is shown that he has become ill or incapacitated?

CONSTITUTIONAL PROVISIONS INVOLVED

Extradition –

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.
>
> United States Constitution, Art. IV, Sec. 2, cl. 2.

Probable Cause for Warrants –

> . . . and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to

be searched, and the persons or things to be seized.

United States Constitution,
Amendment IV.

Due Process of Law –

. . . nor shall any state deprive any person of life . . . without due process of law . . .

United States Constitution,
Amendment XIV, Sec. 1.

STATUTE INVOLVED

Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive

the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

June 25, 1948, c. 645, 62 Stat. 822, 18 U.S.C. §3182.

STATEMENT OF THE CASE

On April 16, 1973, Petitioner was convicted in the Superior Court of Orange County, California, of two felony counts, and sentencing was scheduled for May 17, 1973. Petitioner was permitted to remain free on bail and returned to his home in Las Vegas, Nevada. Petitioner has had a serious heart condition for several years. He suffered a heart attack shortly before he was scheduled to appear for sentencing and was hospitalized at the South Nevada Memorial Hospital in Las Vegas.

On May 17, 1973, the day set for sentencing, petitioner's California counsel appeared before the court at the appointed time, submitted a letter from Dr. George Kleifgen, the attending physician, advising the court of petitioner's condition and hospitalization, and moved for a brief continuance.

The motion for a continuance was summarily denied by Superior Court Judge William C. Speirs, who thereupon issued a bench warrant for petitioner's arrest. Pursuant to the warrant a formal demand was made by the Governor of California upon the Governor of Nevada for the extradition of petitioner, and petitioner was placed under the custody of the Nevada authorities, apparently at the

hospital. After a hearing at which testimony was taken from the attending physician as to petitioner's condition, petitioner was released from custody on bail. Thereafter, a petition for writ of habeas corpus was duly filed in the Nevada state court, and the matter ultimately came on for a hearing on September 12, 1973.

The documents in support of the California extradition demand include the indictment of petitioner and an affidavit by a Deputy District Attorney referring to the trial of petitioner and his conviction, and simply stating: "On May 17, 1973, the fugitive failed to appear for sentencing and a bench warrant for his arrest was issued by the Honorable William C. Speirs of the Orange County Superior Court." (Appendix B, p. B. 4).

However, the Minute Order for the proceedings in the Orange County Superior Court, which was also part of the rendition documents, states "A letter of 'George V. H. Kleifgen, M.D.', May 16, 1973, was received and ordered filed. Motion by defendants (sic) counsel for a continuance. Motion denied. A bench warrant to issue forthwith . . ." (Appendix B, p. B. 3).

The Bench Warrant was also a part of the rendition papers. In the blank for "last known address" the Warrant states: "allegedly South Nevada Memorial Hospital (Coronary artery insufficiency)." In the blank for "Extradition" there is written "Yes," which is initialed. (Appendix B, p. B. 4).

Judge Carl J. Christensen of the Eighth Judicial District Court, Clark County, Nevada, received briefs and conducted an evidentiary hearing on the question of extradition. The testimony included that of a heart specialist,

whose expertise was stipulated by the State, as to petitioner's present condition and prognosis.

At the conclusion of the hearing Judge Christensen granted the writ of habeas corpus. According to the official transcript the following is the complete statement of the court in making this ruling:

> BY THE COURT: What a Judge might do and what a District Attorney intends to do are really items of speculation and at most, would carry with it only a possibility of it happening.
>
> In this particular case, however, it is uncontroverted that the Respondent was hospitalized; that this fact was conveyed to the Court where this Respondent was to have been present for entry of judgment and sentencing.
>
> It is further uncontroverted and clearly shown that this Respondent was on bail during the trial and after the return of the verdict by the jury, for whatever the charge was, and was on bail up until the time of the day of the entry of judgment and sentencing.
>
> It is further clearly shown and admitted that these reasonable circumstances for failure to attend on the day for entry of judgment and sentencing were known and considered prior to the issuing of a Bench Warrant; that pursuant to this Bench Warrant, the Respondent was forcibly detained in his

> hospital bed where he was a patient by the use of bands or chains or whatever.
>
> In view of these uncontroverted facts, as the same are bolstered by the corroborating testimony of the California lawyer and in his representations here, it appears that very probably the constitutional guarantee of the rights of this Respondent will be denied unless this Writ of Habeas Corpus in this proceeding is granted.
>
> The Court feeling that there is a strong probability that incarceration will follow without bail, based upon these facts that have been recited in the record, and the Court further finding that the probability of death approaches almost a certainty as reflected by the testimony of Dr. Friedman, the Court at this time grants the Writ.
>
> Bond exonerated.

(Appendix B contains the last two pages of the transcript of the hearing and the subsequent Order of the Court.)

The Attorney General of Nevada filed a notice of appeal to the Supreme Court of Nevada, and a designation of the record. On its own motion the Supreme Court took the case under advisement before any briefs were filed, rejected petitioner's repeated requests for briefing by the parties, and then issued its decision reversing the lower court and ruling that petitioner should be extradicted. (The Nevada Supreme Court Opinion is Appendix A hereto.) Thereafter, as indicated previously, the Nevada Supreme Court granted petitioner a stay of its mandate pending a petition for certiorari to this Court.

WHEN QUESTIONS RAISED

The questions presented by this petition were first raised by a petition for writ of habeas corpus filed in the Eighth Judicial District Court of the State of Nevada. A copy of the petition is printed in Appendix C hereto.

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES IMPORTANT QUESTIONS CONCERNING THE RELATIONSHIP BETWEEN THE CONSTITUTIONAL PROVISION FOR INTERSTATE EXTRADITION AND THE CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL.

Proceedings for interstate extradition of fugitives are controlled by federal law, being provided for directly by the Constitution and implemented by federal statute. While Article IV, Section 2, Clause 2, of the Constitution and 18 U.S.C. §3182 do not preempt the field of extradition, it is clear that state court proceedings must be conducted in a manner consistent with the federal law, and that state courts are bound by decisions of the Supreme Court of the United States touching on the rights of persons sought to be extradicted.

While the power of the states to extradite is admittedly great, it is elementary that this power cannot be exercised in such a manner as to violate the Constitutional rights of an individual, even one convicted of a felony. Review of this case would be appropriate in view of this Court's dual responsibility for construing the provisions of the Constitution and Federal law governing extradition, and protecting the Constitutional rights of every person.

The first issue presented by this petition is whether on the facts found by the Nevada District Court to exist in this case, and not disputed or questioned by the Nevada

Supreme Court, there is probable cause under the Fourth Amendment for the issuance of a warrant for the extradition arrest of petitioner. Where a person's absence from court is adequately accounted for and not voluntary, particularly where he is shown to be unable to appear because he is physically incapacitated, as by a heart attack, it would seem his failure to appear would not constitute good cause for the issuance of an arrest warrant. While the scope of inquiry on a petition for habeas corpus to bar extradition is quite narrow, it does include an inquiry into whether the rendition documents on their face show probable cause for the issuance of an arrest warrant by the asylum state. See *Kirkland v. Preston*, 385 F.2d 670, 676, 128 U.S. App. D.C. 148 (1967), and cases there cited.

Here, the supporting documents do not show good cause, and after an evidentiary hearing into the matter the lower court in effect found that good cause did not exist for the arrest of petitioner by the State of Nevada.

While the District Court did go on from these retrospective findings to make prospective findings in the last paragraph of his ruling, which prospective findings will be discussed below, the facts would seem to support the conclusion that the petitioner's Constitutional rights under the Fourth Amendment would be violated by extradition. The Nevada Supreme Court in its decision totally ignored the crucial retrospective findings by the lower court.

The second issue presented by this petition involves the proper construction and application of 18 U.S.C. §3182. The scope of judicial inquiry on a petition for habeas corpus in an extradition proceeding includes inquiry into the statutorily required facts on which extradition must be based. Under 18 U.S.C. §3182, these facts are that the person sought to be extradicted be a "fugitive from justice"

in the demanding state, and that he has "fled" to the asylum state.

This Court has stated that 18 U.S.C. §662 (now 18 U.S.C. §§3182, 3195) expressly or by necessary implication prohibits the surrender of a person in one state for removal as a fugitive to another where it clearly appears that the person was not and could not have been a fugitive from the justice of the demanding state. *Innes v. Tobin*, 240 U.S. 127 (1916).

State courts and lower federal courts, generally, have given lip service to the "fugitive from justice" prerequisite but have defined the phrase so broadly that almost any person outside the demanding state who was in the state at the time of the crime may be extradicted. See, *e.g.*, *Ex Parte Morgan*, 78 F. Supp. 756 (1948), affirmed, 175 F. 2d 404, certiorari denied, 338 U.S. 827 (1949). The *Innes* decision, itself, was decided on the basis of a broad construction of the phrase "fugitive from justice." While there are several notable exceptions to the foregoing body of law, it must be conceded that "fugitive from justice," as used in 18 U.S.C. §3182, is not generally construed to mean "fugitive" in the normal sense. Nevertheless, petitioner is unaware of any case, state or federal, where a person physically incapacitated and thus unable to voluntarily return to the demanding state was found to be a "fugitive from justice." Moreover, the instant case presents a particularly compelling situation since the demanding state was notified of petitioner's physical condition and requested to delay requiring petitioner's presence.

Petitioner submits, quite simply, that a person confined to a hospital bed who is physically unable to return to the demanding state cannot reasonably be found to be a "fugitive from justice" and therefore subject to arrest and extradition.

The third question raised by this petition is whether under the circumstances of this case extradition would involve a denial of due process of law. Neither a state extradition act, nor Art. IV, §2, cl. 2, of the Constitution, nor Acts of Congress regulating interstate extradition can prevail over the Fourteenth Amendment. *Application of Middlebrooke*, 88 F. Supp. 943 (1950), reversed on other grounds, 188 F.2d 308 (1951), certiorari denied, 342 U.S. 862 (1951). Even the lowest fugitive has certain rights and the law demands that he be accorded due process at every step of the proceedings against him. The uncontested finding of the district court of Nevada in this case is that if petitioner is extradicted there is a strong possibility that he will be incarcerated without bail pending his appeal, and if he is incarcerated the probability of death before the appeal is decided approaches almost a certainty. Surely, with petitioner's very life at stake, he is entitled to have every procedural safeguard under the Fourteenth Amendment scrupulously applied to his case.

The California court, for reasons known only to itself, chose to disregard the undisputed medical evidence that petitioner could not appear for sentencing because he had been hospitalized with a heart attack, refused to grant a continuance, and ordered the petitioner arrested immediately. This action was clearly arbitrary and capricious and a violation of elementary due process of law.

When presented with uncontroverted medical evidence that a man is hospitalized with a heart attack, no court is free to reject that evidence out of hand, or proceed as if such a showing had not been made. If the California court thought petitioner might be malingering, or doubted the authenticity of the medical evidence, it was free to order an immediate examination of petitioner by any heart

specialist it or the State of California chose, or to take whatever steps were required to determine the facts.

However, elementary notions of civilized conduct and due process require that a court not endanger the life of a person hospitalized with a heart attack by ordering his arrest and extradition. The total failure of the California court to follow the normal procedures dictated by the situation constituted a gross abuse of discretion and deprived the petitioner of the protection afforded by due process of law.

The Nevada district court, on the other hand, when presented with the extradition documents showing that the medical condition of petitioner had been totally disregarded by the California court, in accordance with the procedures ordinarily adopted by courts in dealing with a physically incapacitated person, conducted an evidentiary hearing to determine whether petitioner was healthy enough to face further law enforcement proceedings. On the basis of expert medical testimony he concluded that petitioner was not. Accordingly, he granted the writ of habeas corpus and ordered that petitioner not be turned over to the California authorities to face further law enforcement proceedings. It is submitted that this decision was correct and proper under all the circumstances; and that the Nevada Supreme Court was in error in ruling in effect that expert medical testimony as to the physical condition of the petitioner and his prognosis could not be taken into account. Given the failure of the California court to consider petitioner's health and the danger to his life, elementary due process required the Nevada court to take these matters into account in ruling on the demand for extradition.

Moreover, under the extreme circumstances of this case, where petitioner's life is in the balance, the Nevada Supreme

Court's refusal to permit briefing of the case approaches a deprivation of due process. The decision below was *in petitioner's favor* and should have been affirmed by the Nevada Supreme Court if there was any legitimate construction of the record evidence, under the governing law, which would support an affirmance. For that court to reverse the decision, without affording the party who prevailed below an opportunity to present his analysis and construction of the record in support of that decision, seems highly irregular, notwithstanding the fact that this is a proceeding on a writ of habeas corpus.

In its decision the Nevada Supreme Court totally ignored four-fifths of the district court's findings, which were retrospective, as well as the clear implications of those findings under the governing law. Briefing by the parties is particularly important as an aid in interpreting and construing the record where a complicated legal question is resolved orally by a trial court with a few brief remarks on the record. The proper question before the appellate court is whether, on the record as a whole, the decision below is correct and can be sustained. Assuming, *arguendo,* that, the statements of the law in the Nevada Supreme Court's opinion are sound, the ruling by that court is in error.

The lower court's final prospective remarks were immaterial, for it had already made findings of fact sufficient to sustain the grant of the writ of habeas corpus for lack of probable cause. Denying the petitioner the opportunity to brief the case in support of the decision below constituted a denial of due process of law in the circumstances of this case.

The final issue raised by this petition is simply what are the minimum requirements of due process of law where it is shown that the accused has suffered a heart attack and

is physically unable to proceed. What procedures are to be employed by the courts in resolving the situation presented by this case? Heretofore, one would have thought that in our system of law it is understood by all that we do not proceed relentlessly against a man in total disregard of his health, his physical well being, and his very life. It would seem that at a minimum due process of law requires procedures for taking into account a man's physical well being, even after he has been convicted of a felony.

Apparently in this day and age it can no longer simply be assumed that a court, any court, will proceed in a civilized manner, with due regard for the well being of all persons who appear before it. The California court has not done so here. The Supreme Court of Nevada apparently feels compelled to acquiesce in the barbarous conduct of the court of its sister state out of some misguided view of comity, rather than to support the lawfully and procedurally sound resolution of the matter by its own lower court.

The guidance of this Court is badly needed here, not only for the petitioner, whose life is at stake, but for the purpose of spelling out the minimum procedures required by due process in the not unusual situation where an accused suffers a heart attack or other disabling illness in the course of criminal proceedings against him.

CONCLUSION

For the above-stated reasons, it is respectfully submitted that the petition for writ of certiorari be granted.

Respectfully submitted,

GERALD S. ROURKE

Welch & Morgan
900 – 17th Street, N. W.
300 Farragut Building
Washington, D. C. 20006

Attorney for Petitioner

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY, NEVADA, Appellant,) No. 7503

v. Filed Nov. 20, 1973

EUGENE CHARLES RANDONO, Respondent.

Appeal from an order granting writ of habeas corpus, Eighth Judicial District Court, Clark County; Carl J. Christensen, Judge.

Reversed.

Robert List, Attorney General and William E. Isaeff, Deputy Attorney General, Carson City, for Appellant.

Beckley, DeLanoy & Jemison, and Richard W. Myers, Las Vegas, for Respondent.

OPINION

By the Court, BATJER, J.:

On April 16, 1973, a jury in Orange County, California, found respondent guilty of two felonies. The trial judge scheduled sentencing for May 17, 1973, and permitted respondent to remain free on bail pending imposition of sentence. Respondent failed to appear for sentencing in the California Court, a bench warrant issued and extradiction proceedings were commenced.

The Governor of California requested from the Governor of Nevada the extradition of Randono and on July 16, 1973, the Governor of Nevada issued an executive warrant providing for Randono's arrest and surrender to the California authorities. Randono was arrested but was granted a writ of habeas corpus by the district court and was released from custody. The appellant contends the writ was improperly issued. We agree.

In granting habeas the lower court concluded that Randono's constitutional rights might be violated if he were extradited in as much as he has a "heart condition" and "probable incarcertation" after imposition of sentence might be detrimental to his health.

"*Habeas corpus* is the proper process for testing the validity of the arrest and detention by the authorities of the asylum state for extradition purposes. But a petition for a writ for that purpose tests only that detention; *it does not test the validity of the original or the contemplated incarceration in the demanding state* . . . In essence the rule is that the court may determine whether a crime has been charged in the demanding state, whether the fugitive in custody is the person so charged, and whether the fugitive was in the demanding state at the time the alleged crime was committed." Johnson v. Matthews, 182 F.2d 677, 679 (D.C. Cir. 1950). [Emphasis added.] See Compton v. Alabama, 214 U.S. 1 (1909)

A court in the asylum state cannot hear and determine the guilt or innocence of the accused as to the crime of which he is charged or the constitutional validity of phases of the anticipated penal action by the demanding state.

Here the rationale of the district court is that Randono might not get fair treatment in the California court. Anticipated ill treatment in the demanding state is not within

the contemplation of NRS 179.197 which provides that after the issuance of the executive warrant the legality of the arrest may be challenged by habeas. No authority has been cited, nor have we found any, that would authorize a trial judge to anticipate a potential violation of the constitutional rights of an accused if he is extradited to the demanding state. To the contrary, habeas has been denied where there has been a fear of lynching (Commonwealth v. Baldi, 70 A.2d 439 (Pa. 1950)); fear of a cruel and barbarous punishment and treatment (Commonwealth v. Ruch, 110 A.2d 240 (Pa. 1955)) and fear of racial prejudice (People v. Warden of City Prison, 63 N.Y.S. 2d 620 (Sup. Ct. N.Y. Co. 1946)). See also, Johnson v. Matthews, *supra;* Ex Parte Dukes, 97 A.2d 507 (N.J. 1953), cert. den. 347 U.S. 914 (1954); Ex Parte Marshall, 85 F.Supp. 771 (D.C.N.J. 1949); United State v. McClain, 42 F.Supp. 429 (D.C. Pa. 1942). Likewise, the question of the sanity of an accused is not to be decided in a habeas proceeding in an asylum state. See Charlton v. Kelly, 229 U.S. 447 (1913); Luker v. Koch, 489 P.2d 191 (Colo. 1971). Annot., 114 A.L.R. 693.

Extradition procedures contemplate the prompt return of a fugitive from justice upon a request from the demanding state. United States Constitution, Art. IV, Sec. 2; Uniform Criminal Extradition Act, NRS 179.177 to NRS 179.235 Incl. Respondent makes no showing that relief is unavailable to him in the courts of California. The contentions which the respondent has made to the district court should more properly be made in the courts of California. See Sweeney v. Woodall 344 U.S. 86 (1952).

Reversed.

We concur:
/s/ Thompson, C. J.
/s/ Mowbray, J.
/s/ Gunderson, J.
/s/ Zenoff, J.

/s/ Batjer, J.

ORDER TO STAY REMITTITUR

(Filed Nov. 26, 1973)

Pursuant to motion of Respondent and good cause appearing,

It Is Hereby Ordered that the issuance of the remittitur in this matter is stayed pending the disposition of Respondent's application to the Supreme Court of the United States for a writ of certiorari.

Dated this 26th day of November, 1973.

/s/ Thompson, C.J.

cc:

Honorable Robert List, Attorney General
Messrs. Beckley, DeLanoy & Jemison

APPENDIX B

AFFIDAVIT

State of California)
County of Orange) ss.

Your affiant, John D. Conley, having been first been duly sworn on oath, states as follows:

1. That he is over the age of twenty-one years and is employed as a Deputy District Attorney in the Orange County District Attorney's Office, Santa Ana, California.

2. That he has examined the official records of the Superior Court of the State of California, in and for the County of Orange, dealing with the case of the fugitive, Eugene Charles Randono. The records relate that on June 19, 1970, an information alleging violations of Sections 182.2 and 67 1/2 of the California Penal Code was filed against the fugitive. On April 4, 1973, the fugitive began a jury trial on these charges, as amended on April 4, 1973. On April 16, 1973, the fugitive was found guilty by the jury of these charges. On May 17, 1973, the fugitive failed to appear for sentencing and a bench warrant for his arrest was issued by the Honorable William C. Speirs of the Orange County Superior Court. That copies of documents reflecting the judicial actions referred to above are attached and hereby incorporated by reference into this affidavit.

3. That your affiant has been shown a photograph of a man, showing full face and profile views. Said photograph is attached and incorporated by reference into this affidavit. Said photograph depicts the person known as Eugene Charles Randono.

4. Your affiant has received information by means of a letter that the fugitive has fled California and is now in

custody in Nevada. A copy of this letter is attached and incorporated by reference into this affidavit.

5. Your affiant desires that the fugitive be extradited from Nevada and returned to Orange County, California, to be prosecuted as determined by Law. Your affiant will aid in this prosecution.

DATED this 7th day of June, 1973.

/s/ John D. Conley
Deputy District Attorney
Orange County, California

Subscribed and sworn before me
this 8th day of May, 1973
/s/ Kenneth E. Noel
Judge of the Superior Court of the
State of California, County of Orange [Seal]

FILED
MAY 17 1973
WILLIAM E. ST. JOHN, COUNTY CLERK
By: [illegible] Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
EUGENE CHARLES RADONO,
Defendant.

NO. C-23631

BENCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN IN THIS STATE:

GREETINGS:

An Information having been filed in this County charging the above-named defendant with violation of Sections 182.2 & 67 1/2 P.C.;

NOW, THEREFORE, YOU ARE COMMANDED forthwith to arrest the above-named defendant at any time of the day or night and bring said defendant before this Court, or if the Court be not in session, to deliver said defendant into the custody of the Sheriff-Coroner of Orange County, California.

The reason for this Warrant is:
For Failure to Appear.

Bail is fixed in the amount of $ 25,000.00.

Given under my hand, with the seal of said Court affixed this 17 day of May, 1973.

WILLIAM E. ST. JOHN, COUNTY CLERK
BY: [illegible] Deputy

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE
JUN 5 1973
WILLIAM E. ST. JOHN

DEFENDANT IDENTIFICATION INFORMATION

AKA:
DOB: 8-24-25 RACE: Caucasian HT: 5'9" WT: 165 SEX: Male
HAIR: gray EYES: blue CII: 3054661 FBI: 318714H
DL: FR250324 OC: 186519 SOC. SEC.: 517-22-5621
Last Known Address: (allegedly South Nevada Mental Hospital (Penguin
I.D. Marks: EXTRADITION: Attorney Waiver
INVESTIGATING AGENCY: Orange County District Attorney's office
ANY ADDITIONAL INFORMATION:

NOTE: Certified copy of this warrant sent to Las Vegas P.D. 5-17-73

232-217.1 (8) 2 yr. & OR & Nevada

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 10

Court convened at 1:30 P M. May 17 1973, present
Hon. WILLIAM C. ERVING, Judge; David T. Beatley, Deputy Clerk;
John Murphy, Deputy Sheriff; R. Gerritsen, Reporter;
and the following proceedings were had:

C-23631 PEOPLE VS RANDONO, Eugene Charles

Hearing re: Probation Report and Pronouncement of Judgment
Defendant not in court but represented by counsel Leonard McBride.
People represented by counsel William Morrissey, deputy District
Attorney. A letter of "George V. H. Kleifgen , M.D." May 16, 1973.
was recieved and ordered filed. Motion by defendants counsel for a
continuance. Motion denied. A bench warrant to issue forthwith for
Eugene Charles Randono bail set at $25,000.00 . Present bail forfeited
EXTEND 5-17-73

JUN 5 1973

Statistical Code Use Only	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.

MINUTE ORDER

ORAL OPINION OF THE COURT

* * *

BY THE COURT: What a Judge might do and what a District Attorney intends to do are really items of speculation and at most, would carry with it only a possibility of it happening.

In this particular case, however, it is uncontroverted that the Respondent was hospitalized; that this fact was conveyed to the Court where this Respondent was to have been present for entry of judgment and sentencing.

It is further uncontroverted and clearly shown that this Respondent was on bail during the trial and after the return of the verdict by the jury, for whatever the charge was, and was on bail up until the time of the day of the entry of judgment and sentencing.

It is further clearly shown and admitted that these reasonable circumstances for failure to attend on the day for entry of judgment and sentencing were known and considered prior to the issuing of a Bench Warrant; that pursuant to this Bench Warrant, the Respondent was forcibly detained in his hospital bed where he was a patient by the use of bands or chains or whatever.

In view of these uncontroverted facts, as the same are bolstered by the corroborating testimony of the California lawyer and in his representations here, it appears that very probably the constitutional guarantee of the rights of this Respondent will be denied unless this Writ of Habeas Corpus in this proceeding is granted.

The Court feeling that there is a strong probability that incarceration will follow without bail, based upon these facts that have just been recited in the record, and the Court further finding that the probability of death ap-

proaches almost a certainty as reflected by the testimony of Dr. Friedman, the Court at this time grants the Writ.

Bond is exonerated.

ATTEST, Full, true and accurate transcript of proceedings had.

/s/ J. V. Brower
Official Court Reporter.

Case No. 25174 (Filed Sept. 19, 1973)

IN THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE
EXTRADITION OF

EUGENE CHARLES RANDONO,

Respondent.

ORDER

The Respondent's Petition for Writ of Habeas Corpus having come on for hearing before the above-entitled Court on the 12th day of September, 1973, at 2:00 P.M., in Department VII, RICHARD WM MYERS, Esquire, of the firm of Beckley, De Lanoy & Jemison, Chartered, appearing on behalf of Respondent, LEON SIMON, Esquire, Deputy District Attorney, Clark County, Nevada, and WILLIAM E. ISAEFF, Esquire, Deputy Attorney General, State of Nevada, appearing on behalf of State of Nevada, JERROLD J. COURTNEY, Esquire, also appearing, the Court having the benefit of testimony, Points and Authorities and argument of counsel, and for good cause appearing therefor

IT IS HEREBY ORDERED, that the Petition for Writ of Habeas Corpus is hereby granted; and it is further

ORDERED, that the Respondent's bond is exonerated.

DATED AND DONE, this 19 day of September, 1973.

/s/ Carl J. Christensen

BECKLEY, DE LANOY & JEMISON,
Chartered

By /s/ Richard W. Myers
Attorneys for Respondent
1000 First National Bank Bldg.
Las Vegas, Nevada 89101

APPENDIX C

Case No. 25174 (Filed Aug. 9, 1973)

IN THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

EUGENE CHARLES RANDONO, Petitioner,	)
v.	PETITION FOR WRIT
ROY A. WOOFTER, DISTRICT ATTORNEY CLARK COUNTY, NEVADA, Respondent.	) OF HABEAS CORPUS

COMES NOW, EUGENE CHARLES RANDONO, Petitioner, by and through his attorneys, Beckley, De Lanoy & Jemison, Chartered, and respectfully shows:

1. That Petitioner was imprisoned in the Clark County jail from July 22, 1973, to July 26, 1973, and is restrained of his liberty by virtue of a $5,000 cash bail posted with the Clerk of Clark County on July 26, 1973, pursuant to the order entered by the Honorable Leonard Gang on July 26, 1973.

2. That Petitioner has not been committed and is not detained by virtue of any judgment decree, final order, or process issued by a court or judge of the State of Nevada; nor is he committed or detained by virtue of the final judgment or decree of such a tribunal of civil or criminal jurisdiction; nor the final order of such a tribunal made in a special proceeding instituted for any cause; or by virtue of an execution or other process issued upon such a judgment, decree or final order.

3. That the cause or pretense of the imprisonment and restraint of petitioner, according to the best knowledge and belief of petitioner is an arrest in pursuance of a warrant issued by Mike O'Callaghan, Governor of the State of Nevada, on a requisition from the Governor of the State of California reciting that the petitioner is a fugitive from the justice of the State of California.

4. That Petitioner's imprisonment and restrain is illegal in that

A. The documentation accompanying the said demand of the Governor of the State of California does not comply with N.R.S. 179.177 to 179.235 and is defective as follows:

1. The said documentation does not contain a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole, and

2. The said documentation does not contain a copy of the indictment, information, affidavit, judgment of conviction or sentence authenticated by the executive authority making the demand, and

3. The said documentation is otherwise defective, and

B. That the alleged bench warrant issued by the Honorable William C. Speirs of the Orange County Superior Court, California, on May 17, 1973, was improperly issued against the Petitioner who was then a patient of the Southern Nevada Memorial Hospital, Las Vegas, Nevada, suffering from a coronary artery insufficiency, all of which was well known to the said Honorable William C. Speirs, and

C. That execution of the extradition sought would at this time be harmful to the life of the Petitioner who pres-

ently suffers from acute heart disease and whose treating physician is of the opinion that travel is contraindicated and would be injurious to the Petitioner.

5. That in consequence of the aforesaid, the Petitioner is unlawfully restrained of his liberty in violation of the Fifth Amendment of the Constitution of the United States and Section Eight of the Constitution of the State of Nevada.

6. Wherefore, Petitioner prays that a Writ of Habeas Corpus be issued directing that a hearing and determination as to the cause of such imprisonment and restraint take place before the Honorable Judge Leonard Gang of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, at 2:00 P.M. on the 14th day of August, 1973.

Respectfully submitted,

BECKLEY, DE LANOY & JEMISON,
Chartered

/s/ Richard W. Myers, Esq.
Attorneys for Petitioner
1000 First National Bank Bldg.
Las Vegas, Nevada

I, RICHARD W. MYERS, Esquire, declare:

That I am an attorney at law duly licensed to practice law in the State of Nevada and that I am associated with the law firm of Beckley, De Lanoy & Jemison, Chartered, attorneys for Petitioner Eugene Charles Randono. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on August 9, 1973, at Las Vegas, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Richard W. Myers

RECEIPT of copy of the foregoing Petition for Writ of Habeas Corpus is hereby acknowledged this 9 day of August, 1973.

ROY A. WOOFTER
DISTRICT ATTORNEY
CLARK COUNTY, NEVADA

By /s/ Clara Davis
200 East Carson Avenue
Las Vegas, Nevada

SUPREME COURT, U. S
FILE
APR 2
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

No. 73–1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

BRIEF FOR RESPONDENT IN OPPOSITION

ROBERT LIST
Attorney General
ROBERT GROVES
Deputy Attorney General
Supreme Court Building
Carson City, Nevada 89701
Attorney for Respondent

TABLE OF CONTENTS

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement Of The Case	2
Argument	4
I. Petitioner Has Not Raised a Genuine Federal Question	4
II. Petitioner Did Not Properly Raise Any Federal Statutory or Constitutional Question in the State Courts	4
III. The Decision of the Nevada Supreme Court Rests Upon an Adequate and Independent State Ground	6
IV. Assuming That A Federal Statutory or Constitutional Question Exists And Was Properly Raised Below, This Case Noes Not Present A Substantial Federal Question	7
V. The Decision of the Nevada Supreme Court Is In Complete Harmony with Decisions of Other Federal Courts Where Similar Issues Were Raised	8
Conclusion	10
Appendix A— Uniform Criminal Extradition Act, NRS 179.177 et seq.	1a
Appendix B— Consisting of pages 26–31 of the Transcript of the Hearing in Clark County, Nevada, September 12, 1973, reflecting Argument of Counsel	11a

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	PAGE
Beck v. Washington, 369 U.S. 541, 549–50 (1960)	5
Biddinger v. Commissioner of Police, 245 U.S. 128, 133 (1917)	8, 9
Cardinale v. Louisiana, 394 U.S. 437, 438–39 (1969)	6
Crowell v. Randell, 10 Pet. 368, 9 L.Ed 458 (1836)	6

PAGE

Durley v. Mayo,
351 U.S. 277, 281 (1955) 7

Fox Film Corporation v. Muller,
296 U.S. 207, 210 (1935) 7

Herb v. Pitcairn,
324 U.S. 117, 125–26 (1944) 7

Hogan v. O'Neill,
255 U.S. 52, 56 (1920) 8

New York v. O'Neill,
359 U.S. 1, 5, 10 (1959) 4

Phyle v. Duffy,
334 U.S. 431, 444 (1947) 7

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410 U.S. 351, 352 (1973) 6

United States ex rel. Vitiello v. Flood,
374 F.2d 554, 556 (1967) 9

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453 F.2d 790, 793 (5th Cir. 1971) 9

White River Lumber Company v. Arkansas ex rel. Applegate,
279 U.S. 692, 700 (1928) 5

Whitney v. California,
274 U.S. 337, 362–63 (1926) 5

Constitution of the United States:

Amendment IV 5, 6

Amendment V 6

Amendment XIV 5, 6

Statutes:

Uniform Criminal Extradition Act,
Nevada Revised Statutes 179.177 to 179.235 ..... 2, 4

18 U.S.C. Section 3182 4

Rules of Supreme Court:

Rule 23.1(f) 5

IN THE

Supreme Court of the United States

No. 73–1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Nevada Supreme Court is unreported, and is printed in Appendix A of the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

Whether the arrest and attempted extradition of petitioner as a fugitive from justice from the State of California was proper under the laws of Nevada and the Constitution of the United States? Whether in a state court, in an extradition proceeding, a writ of habeas corpus may be used to test the constitutional validity of anticipated penal action in the demanding state?

STATUTE INVOLVED

Uniform Criminal Extradition Act, Nevada Revised Statutes 179.177 to 179.235, inclusive. A copy of the Nevada Uniform Criminal Extradition Act is printed in Appendix A hereto.

STATEMENT OF THE CASE

On April 16, 1973, petitioner was convicted in the Superior Court of Orange County, California, of two felony counts, to wit: (1) conspiracy to falsely and maliciously have another indicted for any crime or to procure another to be charged or arrested for any crime and (2) offering a bribe to a police officer. Sentencing in the petitioner's case was set for May 17, 1973, and in the meantime the petitioner was permitted to remain free on bail and return to his home in Las Vegas, Nevada.

On May 17, 1973, the day set for sentencing, petitioner's California counsel appeared before the Orange County Superior Court at the appointed time and requested a continuance of the hearing, advising the court that petitioner was at that time hospitalized in Southern Nevada Memorial Hospital in Las Vegas. To substantiate this fact, California counsel submitted a letter (not under oath) from Dr. George Kleifgen. The motion for a continuance was denied by Superior Court Judge William

Speirs, who thereupon issued a bench warrant for petitioner's arrest. Pursuant to the warrant, a formal demand was made by the Governor of California upon the Governor of Nevada for the arrest and extradition of petitioner and the petitioner was placed under the custody of the Nevada authorities at Southern Nevada Memorial Hospital in Las Vegas.

Subsequently, petitioner was released from custody on bail, and he thereafter filed a petition for writ of habeas corpus in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark. The matter ultimately came on for hearing before the court September 12, 1973. At that time, petitioner presented two witnesses on his behalf. The first was his California counsel who testified as to events in court at the time he requested a continuance for the sentencing hearing on May 17, 1973. In addition, the California counsel expressed certain opinions on the possible prejudices of the sentencing judge toward petitioner and Nevadans in general and ventured a guess as to the court's probable decision if the petitioner were returned for sentencing.

The second witness on behalf of the petitioner was a heart specialist who testified about petitioner's then present condition and prognosis. The Nevada District Judge, at the conclusion of the hearing, granted a writ of habeas corpus and discharged petitioner. The Attorney General of Nevada immediately filed a notice of appeal to the Supreme Court of Nevada and the designation of record. On its own motion, the Supreme Court took the case under advisement without requiring briefs or oral arguments. Petitioner never formally moved the court for briefing by the parties.

After due consideration, the Nevada Supreme Court issued its opinion on November 20, 1973, wherein it reversed the District Court Order granting a writ of habeas corpus.

ARGUMENT

I

PETITIONER HAS NOT RAISED A GENUINE FEDERAL QUESTION

In the petition, it is contended that the statute involved in this case is the federal extradition statute, 18 U.S.C. Section 3182. A perusal of both the petition for writ of habeas corpus that was filed in the Nevada District Court, the opinion of the Nevada Supreme Court, and the record as a whole, fails to disclose even a single instance where the federal statute is referred to or relied upon by either of the parties or the courts involved.

Granted that the state law on extradition cannot validly be in conflict with federal law, and granted that the decisions of the United States Supreme Court on extradition matters are binding on the states, it is nevertheless correct that the federal act is not exclusive, *New York v. O'Neill*, 359 U.S. 1, 5, 10 (1959), and the states have been permitted to enact uniform legislation in this regard, mainly the Uniform Criminal Extradition Act, which is the basis for the Nevada statute involved in this case, NRS 179.177 et.seq.

Petitioner has attempted, by referring to a non-exclusive federal statute, to transform what is essentially a state matter, under state law, into a federal question. It is elementary, however, that a federal question does not arise merely because a federal statute may be peripherally involved.

II

PETITIONER DID NOT PROPERLY RAISE ANY FEDERAL STATUTORY OR CONSTITUTIONAL QUESTION IN THE STATE COURTS

Even if this were a federal question, it was not properly raised on the state level. Neither the petition for a writ of habeas corpus, the transcript of the September 12, 1973, habeas corpus hearing,

nor the opinion of the Nevada District Court or that the Nevada Supreme Court discloses any reference to the federal statute.

In addition, even a valid federal question may not be raised for the first time in a petition to the United States Supreme Court; it must be properly raised and considered in the court below. *White River Lumber Company v. Arkansas ex rel. Applegate*, 279 U.S. 692, 700 (1928); *Whitney v. California*, 274 U.S. 337, 362–63 (1926). It is submitted that there is no showing whatsoever that the issue of conformity with the federal statute was ever properly raised below. Rules of the Supreme Court, Rule 23.1 (f).

Of course, even if a valid federal question is properly raised below, it cannot be urged as a ground for a petition for writ of certiorari. Unless the federal question was squarely faced and decided by the state court, the decision of the lower court cannot be reviewed. In the instant case, the opinion of the Nevada Supreme Court discloses no reference to the federal statute or to those constitutional provisions cited by petitioner. The sole references are to Nevada statutes.

As the Court said in *Beck v. Washington*, 369 U.S. 541, 549–50 (1960), the federal question must be presented to the state court and a state court opinion which merely discusses the interpretation to be given to a state statute is insufficient grounds upon which to base a U.S. Supreme Court review. As common sense would indicate, the United States Supreme Court cannot review a state court's decision on a federal question, unless the state court actually made a decision on that federal question.

And in particular, the record in this case, which is now on file with the Clerk of this Court, is totally devoid of any reference to alleged violations of petitioner's constitutional rights under either the Fourth Amendment or the Due Process Clause of the Fourteenth Amendment. Rules of the Supreme Court, Rule 23.1 (f).

The entire thrust of the testimony offered by petitioner and the argument of his counsel in the Nevada District Court at the hearing on September 12, 1973 was (1) that the judge in Orange County, California, was prejudiced against all Nevadans and that such prejudice would affect petitioner at any future hearing or sentencing and (2) that petitioner's health continued to be unstable, with possible adverse consequences if he were returned to California and actually sent to prison, a matter which was pure speculation on the part of petitioner, his witnesses, his counsel and the Nevada District Court judge. See Appendix B hereto.

In fact, the only portion of the Constitution of the United States cited in petitioner's original petition for writ of habeas corpus appears in paragraph V thereof:

> "That in consequence of the aforesaid, the petitioner is restrained of his liberty in violation of the *Fifth Amendment* of the Constitution of the United States and Section Eight of the Constitution of the State of Nevada." (Emphasis added)

Since the Federal constitutional issues involving the Fourth Amendment and the Fourteenth Amendment are being raised here in this Court for the first time, the Court should continue its long tradition and decline to decide these matters in this particular forum. *Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Cardinale v. Louisiana*, 394 U.S. 437, 438–39 (1969), *Crowell v. Randell*, 10 Pet. 368, 9 L.Ed 458 (1836).

III

THE DECISION OF THE NEVADA SUPREME COURT RESTS UPON AN ADEQUATE AND INDEPENDENT STATE GROUND

Even when a valid federal question is involved and properly raised, and perhaps even discussed by the state court, U.S.

Supreme Court review will not lie when the state court decision was based as well on an adequate and independent state ground. *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1944); *Fox Film Corporation v. Muller*, 296 U.S. 207, 210 (1935). In the instant case, lacking all reference to federal law, the Nevada Supreme Court decision would certainly appear to rest on adequate independent state grounds. The Supreme Court has gone even further, however, and stated that even when a federal question is involved in a state court opinion and it is not certain whether the decision was based on federal or state grounds, it will be presumed the decision was based on state grounds. *Durley v. Mayo*, 351 U.S. 277, 281 (1955); *Phyle v. Duffy*, 334 U.S. 431, 444 (1947).

IV

ASSUMING THAT A FEDERAL STATUTORY OR CONSTITUTIONAL QUESTION EXISTS AND WAS PROPERLY RAISED AND CONSIDERED BELOW, THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Respondent contends that even if a valid federal question was properly raised and considered by the state courts of Nevada, this question would not be of sufficient gravity to merit review by this Court.

Looked at broadly, petitioner is questioning whether an individual allegedly unable to appear for sentencing because of a medical condition is a fugitive from justice and may be extradited, especially in view of the fact that a medical witness indicates that incarceration in the demanding jurisdiction might be seriously detrimental to his health.

It is submitted that this is not a question of wide import, with recurring significance and importance beyond its own facts. The decision with regard to the merits of this controversy would be

expected to have little immediate effect and few implications outside the case itself.

V

THE DECISION OF THE NEVADA SUPREME COURT IS IN COMPLETE HARMONY WITH DECISIONS OF OTHER FEDERAL COURTS WHERE SIMILAR ISSUES WERE RAISED

The decision of the Nevada Supreme Court is in complete harmony with both the decisions of this Court and of other lower federal courts on extradition matters.

As extradition is a somewhat esoteric area of law, it is well first to remember the interpretation given to the extradition laws by this Court. In referring to the constitutional and statutory provisions on extradition, the Court in *Biddinger v. Commissioner of Police*, 245 U.S. 128, 133 (1917) stated:

> "* * * they have not been construed narrowly and technically by the courts as if they were penal laws * * * because, in delivering up an accused person to the authorities of a sister state, they are not sending him for trial to an alien jurisdiction whose laws or standards might condemn, but simply returning him to be tried still under the protection of the Federal Constitution. * * *"

In the instant case, petitioner's situation is even less favorable as he has already been convicted of two serious felonies after a jury trial and became a fugitive with the determination of his guilt beyond reasonable doubt already having been made.

As to whether a person who is unable to appear in the demanding state at the time of sentencing because of a claimed medical condition is a "fugitive" within the meaning of the extradition laws, the question has been well settled by previous decisions of this Court. In *Hogan v. O'Neill*, 255 U.S. 52, 56 (1920), this Court stated:

> "To be regarded as a fugitive from justice it is not necessary that one should have left the state * * * for the very purpose of avoiding prosecution, but simply that, having committed there an act which * * * constitutes a crime, he afterwards had departed from its jurisdiction, and when sought to be prosecuted, is found within the territory of another state."

Or as the Court in *Biddinger v. Commissioner of Police, supra,* at 133 indicated, it is the departure itself from the demanding jurisdiction which is the crux, "no matter for what purpose or with what motive, nor under what belief."

Also, the decisions of this Court and the lower federal courts are uniform in holding that the matters on which the Nevada District Court based its opinion in releasing petitioner from the custody of the Governor's warrant, i.e. the propriety of the California Superior Court's issuing the bench warrant for petitioner under these particular circumstances and the medical prognosis for his health while in custody in California, are not questions properly before a court in a habeas corpus proceeding on an extradition.

Courts at all levels have frequently held that only three issues may properly be raised in such a proceeding: (1) Whether the petitioner in the habeas corpus proceeding is in fact the individual sought by the demanding state, (2) whether the extradition papers are in order and he is properly charged with a crime in the demanding state or has been adjudged guilty, and (3) whether he was in the demanding state when the crime was committed. *See Biddinger v. Commissioner of Police, supra,* at 135, *United States ex rel. Vitiello v. Flood,* 374 F.2d 554, 556 (2nd Cir. 1967); *United States ex rel. Tyler v. Henderson,* 453 F.2d. 790, 793 (5th Cir. 1971).

Thus the decision of the Nevada Supreme Court that habeas

corpus may not be used to test "the constitutional validity of phases of the anticipated penal action by the demanding state" is manifestly in harmony with the decisions of the various federal courts. The Nevada Supreme Court correctly held that the Nevada District Court had considered matters not properly before it.

Throughout the proceedings below and in the petition to this Court, no authority has been cited that would authorize a trial judge to anticipate a potential violation of the constitutional rights of an accused if he is extradited to the demanding state. To the contrary are the numerous cases cited in the opinion of the Nevada Supreme Court included in the record on file herein.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT LIST
Attorney General

By ROBERT GROVES
Deputy Attorney General
Supreme Court Building
Carson City, Nevada 89701

Attorney for Respondent.

APPENDIX "A"

Nevada Revised Statutes

UNIFORM CRIMINAL EXTRADITION ACT

179.177 Short title. NRS 179.177 to 179.235, inclusive, may be cited as the Uniform Criminal Extradition Act.
(Added to NRS by 1967, 1098)

179.179 Definitions. As used in NRS 179.177 to 179.235, inclusive, unless the context requires otherwise:
1. "Executive authority" means the governor, and any person performing the functions of governor in a state other than this state.
2. "Governor" means any person performing the functions of governor by authority of the law of this state.
3. "State," when referring to a state other than this state, means any other state or territory, organized or unorganized, of the United States of America.
(Added to NRS by 1967, 1098)

179.181 Fugitives from justice; duty of governor. Subject to the provisions of NRS 179.177 to 179.235, inclusive, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.
(Added to NRS by 1967, 1098)

179.183 Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless it is:
1. In writing alleging, except in cases arising under NRS 179.189, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state; and
2. Accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or
3. Accompanied by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by

the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole.

The indictment, information or . ffidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(Added to NRS by 1967, 1098)

179.185 Governor may investigate case. When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

(Added to NRS by 1967, 1099)

179.187 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.

1. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

2. The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in NRS 179.223 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(Added to NRS by 1967, 1099)

179.189 Extradition of persons not present in demanding state at time of commission of crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in NRS 179.183 with committing an act in this state, or in

a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of NRS 179.177 to 179.235, inclusive, not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

(Added to NRS by 1967, 1099)

179.191 Issuance of governor's warrant of arrest; its recitals. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

(Added to NRS by 1967, 1099)

179.193 Manner and place of execution. Such warrant shall authorize the peace officer or other person to whom directed to:

1. Arrest the accused at any time and any place where he may be found within the state; and
2. Command the aid of all peace officers or other persons in the execution of the warrant; and
3. Deliver the accused, subject to the provisions of NRS 179.177 to 179.235, inclusive, to the duly authorized agent of the demanding state.

(Added to NRS by 1967, 1099)

179.195 Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(Added to NRS by 1967, 1100)

179.197 Rights of accused person; application for writ of habeas corpus.

1. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

2. If the prisoner or his counsel state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.

3. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(Added to NRS by 1967, 1100)

179.199 Penalty for noncompliance with NRS 179.197. Any officer who delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to NRS 179.197, shall be guilty of a misdemeanor.

(Added to NRS by 1967, 1100)

179.201 Confinement in jail when necessary.

1. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

2. The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping. Such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

(Added to NRS by 1967, 1100)

179.203 Arrest prior to requisition.

1. Whenever any person within this state is charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under NRS 179.189, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole; or

2. Whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under NRS 179.189, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state,

the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(Added to NRS by 1967, 1100)

179.205 Arrest without a warrant. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year; but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in NRS 179.203. Thereafter his answer shall be heard as if he had been arrested on a warrant.

(Added to NRS by 1967, 1101)

179.207 Commitment to await requisition; bail. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under NRS 179.189, that he has fled from

justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in NRS 179.209, or until he is legally discharged.

(Added to NRS by 1967, 1101; A 1967, 1389)

179.209 Bail: In what cases; conditions of bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, or unless the prisoner is charged as a parole violator or escaped convict, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state. No prisoner may be admitted to bail after having been arrested upon the warrant of the governor of this state.

(Added to NRS by 1967, 1101; A 1973, 800)

179.211 Extension of time of commitment; adjournment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in NRS 179.209, but within a period not to exceed 60 days after the date of such new bond.

(Added to NRS by 1967, 1101)

179.213 Forfeiture of bail. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(Added to NRS by 1967, 1102)

179.215 Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against

such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

(Added to NRS by 1967, 1102)

179.217 Guilt or innocence of accused: When inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided has been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

(Added to NRS by 1967, 1102)

179.219 Governor may recall warrant or issue alias. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(Added to NRS by 1967, 1102)

179.221 Fugitives from this state; duty of governors. Whenever the governor of this state demands a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

(Added to NRS by 1967, 1102)

179.223 Application for issuance of requisition: By whom made; contents.

1. When the return to this state of a person charged with crime in this state is required, the district attorney shall present to the governor his written application for a requisition for the return of the person charged in which application shall be stated:

(a) The name of the person so charged;

(b) The crime charged against him;

(c) The approximate time, place and circumstances of its commission;

(d) The state in which he is believed to be, including the location of the accused therein at the time the application is made; and

(e) A certification that, in the opinion of the district attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

2. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the district attorney of the county in which the offense was committed, the state board of parole commissioners, or the warden of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated:

(a) The name of the person;

(b) The crime of which he was convicted;

(c) The circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole; and

(d) The state in which he is believed to be, including the location of the person therein at the time application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The district attorney, state board of parole commissioners, warden or sheriff may also attach such further affidavits and other documents in duplicate as he deems proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state of the State of Nevada to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(Added to NRS by 1967, 1102; A 1969, 15)

179.225 Costs and expenses. When the punishment of the crime is the confinement of the criminal in the Nevada state prison, the expenses shall be paid from funds appropriated to the governor for such purpose, upon approval by the state board of examiners, but after such appropriation is exhausted the expenses shall be paid from the reserve for statutory contingency fund upon approval by the state

board of examiners; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and necessary traveling expenses and subsistence allowances in the amounts authorized by NRS 281.160 incurred in returning such prisoner.

(Added to NRS by 1967, 1103; A 1968, 22; 1969, 640; 1973, 170)

179.227 Immunity from service of process in certain civil actions. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

(Added to NRS by 1967, 1103)

179.229 Written waiver of extradition proceedings.

1. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in NRS 179.191 and 179.193 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; but before such waiver is executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in NRS 179.197.

2. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

(Added to NRS by 1967, 1103)

179.231 Nonwaiver by this state. Nothing contained in NRS 179.177 to 179.235, inclusive, shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under NRS 179.177 to 179.235, inclusive, which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

(Added to NRS by 1967, 1104)

179.233 No right of asylum; no immunity from other criminal prosecutions while in this state. After a person has been brought back to this state by or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

(Added to NRS by 1967, 1104)

179.235 Interpretation. The provisions of NRS 179.177 to 179.235, inclusive, shall be so interpreted and construed as to effectuate their general purposes to make uniform the law of those states which enact them.

(Added to NRS by 1967, 1104)

APPENDIX "B"

Argument of Counsel

BY THE COURT: Before arguing, in your opening remarks, Mr. Myers, you said that there was no statement by executive authority.

Will counsel approach the Bench.

> (Thereupon, counsel approached the Bench, and a discussion was had between Court and counsel, not reported.)

BY MR. MYERS: May it please the Court, first I would like to comment on the unusual procedural posture of this case.

Governor O'Callaghan had an application for a hearing. He has declined to act on that until after disposition is made of this Writ.

Because I have no idea whether he will grant that or not, I must assume that this is the last chance that Mr. Randono will have to be heard in the State of Nevada on this extradition matter. His fate rests in Your Honor's hands.

Mr. Randono has been the victim of a most peculiar set of circumstances, circumstances which he did not create himself. He has been placed in a real dilemma. The Affidavit that I have attached to the papers filed this morning indicate that Mr. Randono is a Nevada citizen.

BY THE COURT: I appreciate all of that, and I sympathize. Now, what about the rest? Going from the fact that he is a good Nevada citizen; he was in California and he was the subject of a criminal prosecution. Now, I'm not going to speculate whether he was guilty or not. I agree that that is not a proper subject. I understand that he was tried once and it was a hung jury, and he was tried again and there was a verdict. All we know is that he has a right to appeal, which if he would like to assert in California.

Now, if I grant a Writ, how would we ever do that?

BY MR. MYERS: Your Honor, that again is something that has been created not by Mr. Randono and not by myself, but by the District Attorney of Orange County. I think there is testimony and I will represent that we have made overtures and we would be willing to make concessions. In fact, we would have Mr. Randono go there voluntarily if we could get the assurance that he will get bail pending an appeal.

We do not have the assurance, and in fact, his counsel's testimony or opinion, is that if he returns, he will not get bail pending appeal.

If he would get this, it would be just fine, but this was created not by Mr. Randono, but by Orange County.

Now, returning to the crucial date of May 17, 1973. Mr. Randono at that time had a heart attack and he was in Southern Nevada Memorial Hospital. We sent down medical documentation to that effect, and he would have appeared if he had not had a heart attack. He would, according to the testimony, have been given bail pending an appeal. He would be back in Nevada, as his case would be on appeal, and it would ultimately be decided. But through no fault of his, he had a heart attack, and if Judge Spears would have entertained counsel's motion for a continuance for a short time until Mr. Randono had time to recuperate, he could have received bail pending an appeal. And again, everything would have been fine.

Unfortunately, he had this heart attack, and is now taking care of himself, so says the doctor. He may not have taken care of himself at one time, but he is taking care of himself now and it is not his fault that he had a heart attack. Again, it was no fault of his own. He was not there because he had a physician, a Nevada physician's report, and Judge Spears declined to grant a short continuance. If he had, none of this would have happened.

Now, why was it denied? Because, unfortunately, Mr. Randono comes from that notorious city of Las Vegas, Nevada. If he came from a place like Phoenix or another city, in all probability the statement of the doctor would have been honored. And again, everything would have been proceeding according to California law. But, Judge Spears denied it because he was a Nevada citizen.

The fact that he is a Nevada citizen is no fault of Mr. Randono. Again, everything has been created by things that have happened and occurred in Orange County; not because of Mr. Randono.

We have tried to resolve this matter on an amicable basis and we have not been successful.

If Mr. Randono were to return now to California, he will not get bail pending an appeal. He will be incarcerated for a period of anywhere from six to eighteen months. He has a heart condition, which, under the physician's testimony, can very well be fatal. Not so much because the California medical facilities are not available, but because of the situation created by simple confinement.

Our contention, Your Honor, is set forth in the various briefs, and I would submit, Your Honor, that to require Mr. Randono to now go back to California under these circumstances would be to deny all of the constitutional rights that he has.

Now, Your Honor, I think that I am not being over-dramatic, but

under the physician's testimony, may I say that should a Writ be denied, that this is tantamount to Mr. Randono's death.

BY THE COURT: Well, I understand the emotional impact of all of this, as I told you before.

BY MR. MYERS: Well, this is more than an emotional impact. I think it is more than a traumatic impact. I think it is very real and practical, and it may very well cause his death just because of an anti-Nevada attitude, and I would urge Your Honor to let this man die in Nevada, rather than in the Orange County jail waiting for the Supreme Court to act.

BY THE COURT: Well, I don't want to hear any more about that. I want to hear about the law.

BY MR. MYERS: Well, Your Honor, the law in this state permits this testimony under these special circumstances, and the law, as the Constitution provides, is that this man should not be prejudiced because he comes from a particular state, and if he will be prejudiced because he does come from this particular state, that prejudice will ultimately result in his death. Just because he is a Nevada citizen, if this Writ is denied. And for those reasons, we ask that the Writ be granted.

BY MR. SIMON: Your Honor, I think clearly and strictly the legal issue is the paper that supports the Nevada Governor's Warrant. Are they in proper order? Was there a proper demand from the Governor of California?

There are numerous other documents that establish probable cause, but I think the only issues that defense counsel seriously posed to this Court are that there would be a serious jeopardy to Defendant's life if he were returned and there exists prejudice against a Nevada citizen in the Orange County Court to which he would be returned.

Now, as to the state of his health, I think that clearly Dr. Friedman has established that he does have a very serious heart condition. It is the State's position that this is the type of matter that should not be considered by the Court, but should be considered by the Governor of Nevada at a Nevada Governor's hearing and I don't believe that this type of matter is properly before the Court on a Writ of Habeas Corpus.

As to the issue of prejudice in Orange County, the only evidence we have of that is the statement made to the Court which was not even under oath, that he talked to some Deputy District Attorney in Orange County, who he has not identified, who relayed an off-the-cuff comment that the Judge made off the record.

Now, I would submit, Your Honor, that there is no basis for the

Writ and the State would ask that the Writ be denied, and that we would stipulate, Your Honor, that if Your Honor does determine to deny the Writ, I think certainly Mr. Randono should have adequate time to have a Governor's hearing, so he can raise the issues of his health, which, of course, is a serious matter.

Dr. Friedman testified that he would testify before the Governor, if such a hearing were held, and Dr. Friedman also testified that he would be willing to testify before the California Court.

BY MR. MYERS: Your Honor, counsel states that the only evidence of Orange County anti-Nevada prejudice was through Mr. Pomeranz. Mr. McBride, an eminent California counsel and former Judge in Orange County testified here under oath, and I think really that was a very courageous thing to do to come into this jurisdiction and testify that a Judge on the Bench in Orange County, California has regional prejudice and it has resulted in the denial of this man's rights. So this is additional evidence.

In addition to those constitutional guarantees, the three that I have already relied upon, we rely upon the rule regarding cruel and unusual punishment, and it would be cruel and unusual punishment to send this man back to California under the circumstance of this case, and the circumstances which he did not create. It would certainly be nothing less than cruel and unusual.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of The State of Nevada

---

REPLY BRIEF FOR PETITIONER

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THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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REPLY BRIEF FOR PETITIONER

The brief for Respondent Sheriff, Clark County, Nevada, initially contends that no federal question is raised by the petition for certiorari herein, and that the Nevada Supreme Court decision rests on adequate state grounds. However, Respondent concedes that state law cannot validly be in conflict with the federal law on extradition. Under the circumstances, it is apparent that the petition herein raises the federal question whether the decision of the Nevada Supreme Court is in conflict with the federal extradition statute and the federal Constitutional rights of Petitioner.

Nowhere in its brief does the Respondent address the first question raised in the petition, that of probable cause under the Fourth Amendment for the extradition arrest of Petitioner. Yet in *Kirkland v. Preston*, 385 F.2d 670, 676, 128 U.S. App. D.C. 148 (1967), cited by Petitioner, the D. C. Circuit, sitting as the highest court of the District of Columbia to review the extradition actions of the chief executive of the District (385 F.2d at 672), stated the law as follows:

> "[D]evelopments since *Wolf* [*Wolf v. People of State of Colorado*, 338 U.S. 25 (1949)] and *Mapp* [*Mapp v. State of Ohio*, 367 U.S. 643 (1961)] have made it clear that what those cases applied to the states was the whole of the Fourth Amendment, thereby transmuting the federal standard of probable cause into a minimal and uniform requirement of a valid arrest by state officers." (Footnote citations omitted.) (385 F.2d at 674)

The Due Process questions referred to in the petition, and the question whether Petitioner is a fugitive from justice within the federal extradition statute, also clearly present genuine federal questions.

Respondent's brief claims that the Nevada Supreme Court decision rests on adequate state grounds but does not disclose what these state grounds might be. However, it is beyond dispute that state laws and state court decisions which are repugnant to the Constitution of the United States or a federal extradition statute cannot stand. *Application of Middlebrooke*, 88 F. Supp. 943 (S.D. Cal., 1950), reversed on other grounds, 188 F.2d 308 (1951), certiorari denied, 342 U.S. 862 (1951); *Smith v. State of Idaho*, 373 F.2d 149 (9 Cir., 1967), certiorari denied, 388

U.S. 919 (1967); *Walden v. Mosley*, 312 F. Supp. 855 (N.D. Miss., 1970). While Nevada state laws dealing primarily with procedural matters undoubtedly come into play during the attempted extradition of the Petitioner, the questions presented by his petition to this Court are unquestionably federal in nature.

Respondent also contends that Petitioner did not properly raise any federal questions in the state courts. The short answer to this claim is that Petitioner was never given the opportunity to raise such questions. At page 3 of its brief, Respondent claims that the Petitioner never "formally" moved the Nevada Supreme Court for briefing by the parties. The fact is that Petitioner twice asked the Nevada Supreme Court, in writing, to permit briefing of the appeal and was rejected each time. Printed as Appendix A hereto is an affidavit of Richard W. Meyers, Petitioner's Nevada attorney, detailing Mr. Meyers' efforts to secure for the Petitioner the opportunity to brief his case in the Nevada Supreme Court. One of the three attachments to that affidavit, also printed in Appendix A, is a letter opposing Mr. Meyers' request signed for the Attorney General of Nevada, who is now on the brief for Respondent.

In *Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158 (5 Cir., 1969) it was stated:

> "The requisites of that portion of due process described as 'hearing' are satisfied by providing the parties with the opportunity of affirmatively advancing argument with supporting authority and a like opportunity for response and counter-argument by the adversary. This may be done by briefs without oral argument." (406 F.2d at 1162).

The Nevada Supreme Court's reversal of the decision below without affording Petitioner an opportunity to be heard by brief violated due process of law.

Respondent argues that, "looked at broadly" (Brief in Oppositon, p. 7), this case is not of sufficient gravity to merit review by this Court, and is not of recurring significance. It is difficult for the Petitioner to look at this case broadly, however, since his life is at stake. In any event, the Petitioner submits that the situation presented in this case is not as unusual as Respondent would have it appear, and that on the contrary, it occurs fairly frequently in the courts. What is unusual is the conduct of the state courts involved, which, apart from the District Court of Nevada, have shown so little regard for the fundamental rights of the Petitioner. That is a reason for this Court to grant review, not deny it.

At page 8 of its brief, Respondent states that it is well settled that a person who is unable to appear in the demanding state at the time of sentencing because of a medical condition is a "fugitive" within the meaning of the extradition laws, citing *Hogan v. O'Neill,* 255 U.S. 52 (1920). The statement is inaccurate and the citation misleading. The *Hogan* case did not involve a defendant suffering from a medical disability. Moreover, far from being well settled, Petitioner believes the question has never been ruled upon. Petitioner is unaware of any case, state or federal, where a person physically incapacitated and thus unable to voluntarily return to the demanding state was found to be a "fugitive from justice" and subjec to immediate extradition.

Petitioner respectfully submits that the important federal questions presented by this case warrant the grant of certiorari. As the attachments to this Reply show, Petitioner has repeatedly attempted to brief the case in the Nevada

Supreme Court, without success. However, Petitioner realizes that the Court may still prefer to have the Nevada Supreme Court rule on these questions before considering the case. Accordingly, the Court may wish to remand the proceeding to the Nevada Supreme Court for full briefing and decision on all aspects of the case prior to review in this Court. In that event, the Court is respectfully requested to grant certiorari and retain jurisdiction over the case in order that Petitioner will not again be subject to immediate extradition upon the decision of the Nevada Supreme Court, should the present decision be reaffirmed.

WHEREFORE, the premises considered, the Court is respectfully requested to grant the writ of certiorari in this case.

Respectfully submitted,

Gerald S. Rourke
WELCH & MORGAN
300 Farragut Building
900 17th Street, N.W.
Washington, D.C. 20006
Attorney for the Petitioner

APPENDIX A

AFFIDAVIT OF RICHARD W. MYERS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

RICHARD W. MYERS, Esquire, being first duly sworn, deposes and states as follows:

That your affiant is an attorney at law duly licensed to practice law in the State of Nevada and is associated with the law firm of BECKLEY, SINGLETON, DE LANOY & JEMISON, Chartered, Nevada attorneys for EUGENE CHARLES RANDONO.

That on September 12, 1973, the Honorable Carl J. Christensen, District Judge for the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, granted a Writ of Habeas Corpus releasing Randono, which order was reduced to written form, signed and filed on September 19, 1973.

That thereafter, and on October 1, 1973, a Notice of Appeal signed by William E. Isaeff, Deputy Attorney General for the State of Nevada, appealing said order was filed in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

That thereafter, and on or about October 24, 1973, your affiant learned that the Nevada Supreme Court had elected to take the matter under submission and decide the appeal without the benefit of briefs or oral argument.

That on October 24, 1973, your affiant requested the Clerk of the Nevada Supreme Court for the opportunity to file briefs and have a hearing before the Nevada Supreme Court in a letter, a photocopy of which is attached hereto as Exhibit A.

That thereafter, and on October 29, 1973, William E. Isaeff, Deputy Attorney General of Nevada, sent to the Nevada Supreme Court a letter opposing your affiant's request for briefing and hearing, a photocopy of which is attached hereto as

Exhibit B.

That on November 5, 1973, your affiant met with the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, in the presence of William E. Isaeff, Deputy Attorney General of Nevada, in the Honorable Gordon Thompson's chambers in Carson City, Nevada. That in said conference your affiant renewed the request for briefing and hearing.

That on or about November 6, 1973, your affiant was advised that the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, had taken the matter under submission.

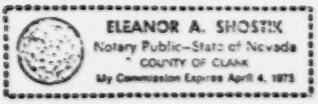
That on November 6, 1973, your affiant dispatched a telegram directed to the Honorable Gordon Thompson, Chief Justice of the Nevada Supreme Court, requesting the opportunity for briefing, a true and correct copy of which is attached hereto as Exhibit C.

Further affiant sayeth not.

Richard W. Myers
RICHARD W. MYERS

Subscribed and sworn to before
me this 4th day of April, 1974.

Eleanor A. Shostik
Notary Public.



October 24, 1973 Las Vegas

AIRMAIL - SPECIAL DELIVERY

C. R. Davenport, Clerk
Supreme Court of Nevada
Carson City, Nevada 89701

Re: State v. Randano
Supreme Court No. 7503

Dear Mr. Davenport:

Pursuant to our telephone conversation of this date, Respondent Randano hereby requests the Supreme Court to set a time for briefs and a hearing in the above-entitled matter.

This request is based upon the fact this case involves a unique factual background and complex issues of law. It is submitted that the Supreme Court will better be in a position to properly decide this appeal with the benefit of briefs and a hearing.

Very truly yours,

PECKLEY, DE LANOY & JEMISON,
Chartered

Richard W. Myers

RWMice
cc: William Isaeff, Deputy Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CARSON CITY 89701

ROBERT LIST
ATTORNEY GENERAL

October 29, 1973

Mr. C. R. Davenport
Clerk
Supreme Court of Nevada
Carson City, Nevada 89701

Re: State vs. Randono,
Supreme Court No. 7503

Dear Mr. Davenport:

The undersigned has received a carbon copy of a letter sent to you by Richard W. Myers, Esq., attorney for Eugene Charles Randono in the above-captioned appeal.

The State of Nevada wishes to go on record as opposing the request by Mr. Myers that the Supreme Court consider this case as requiring the benefit of a complete brief and an oral hearing. It is the position of the State of Nevada that this particular habeas corpus appeal is clear on the face of the record which is now before the Court.

The rules of law governing habeas corpus hearings are few in number and unusually clear in their direction. The factual background in which this case was presented to the Eighth Judicial District Court is fully set out in the transcript of the proceedings below which has been made a part of the Record on Appeal. Therefore, this office can see no reason for any delay.

The State would respectfully urge the Court to continue handling the appeal of this matter in an expeditious fashion, which is the course we have previously been advised the Court is presently taking.

Sincerely,

ROBERT LIST
Attorney General

By William E. Isaeff
William E. Isaeff
Deputy Attorney General

WEI/cw
cc: Richard W. Myers, Esq.

EXHIBIT B

T E L E G R A M

November 6, 1973

The Honorable Gordon Thompson
Chief Justice
Nevada Supreme Court
Carson City, Nevada

Re: Sheriff, Clark County, Nevada v. Eugene Charles Randono, No. 7503

We understand that the Court, pursuant to its own Rule 2, has denied Respondent the opportunity to submit briefs and to permit oral argument in the above entitled matter.

We are required to raise constitutional issues at the earliest possible moment. Respondent contends that the denial of an opportunity to file briefs constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution, and cites to the Court the case of Groendyke Transport, Inc. v. Davis, 406 F.2d 1158 (5th Cir. 1969), wherein the court describes the limits of the exercise of Rule 2 of the Federal Rules of Appellate Procedure, which is identical to Rule 2 of the Nevada Rules of Appellate Procedure.

It is submitted that the minimum requirements of due process are satisfied only by providing the parties with the opportunity of affirmatively advancing arguments with supporting authorities, and a like opportunity for response and a counter argument by the adversary.

We concede that this may be done by briefs without oral argument; and further concede that the court may shorten the time for briefing and response.

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EXHIBIT C